

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

DIANE MURPHY,

Plaintiff,

v.

NO. 1:05cv443-W
Demand for Jury Trial

ADVANCE AMERICA CASH
ADVANCE CENTERS OF ALABAMA,

Defendant.

**MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL
PLAINTIFF'S ANSWERS TO INTERROGATORIES
AND PRODUCTION OF DOCUMENTS**

Defendant, Advance America Cash Advance Centers of Alabama, respectfully files this Memorandum in support of its Motion to Compel. Plaintiff Diane Murphy has willfully failed to comply with the Federal Rules of Civil Procedure by not serving answers to Defendant's interrogatories or responses to Defendant's requests for production of documents. Plaintiff should be ordered to fully respond to Defendant's interrogatories and requests for production of documents. Defendant further requests that it be awarded its attorneys' fees and costs in connection with this Motion and that the Court provide such other appropriate relief as this Court may deem just, equitable, and proper.

I. BACKGROUND

Plaintiff filed her Complaint on May 16, 2005. On December 16, 2005, the Court entered a Scheduling Order that established May 30, 2006 as the deadline for completing all discovery.

On December 2, 2005, Defendant served its First Set of Interrogatories (Exhibit A hereto) and First Request for Production of Documents, Writings and Things (Exhibit B hereto) to Plaintiff. Pursuant to the Federal Rules of Civil Procedure, Plaintiff's interrogatory answers and response and production in response to Defendant's First Request for Production were due on January 4, 2006. On January 10, 2006, when no responses had been received, counsel for Defendant wrote Plaintiff's counsel a letter advising that Plaintiff's discovery responses were overdue and requesting that Plaintiff either serve responses to Defendant's discovery requests or dismiss her lawsuit. (*See*, copy of January 10, 2006 correspondence attached hereto as Exhibit C). In addition, Defendant's counsel has had at least two telephonic consultations with Plaintiff's counsel regarding Plaintiff's outstanding discovery responses. To date, Plaintiff has not provided Defendant with answers to Defendant's interrogatories or responses to Defendant's requests for production of documents.

II. ARGUMENT

Defendant's Motion to Compel Should be Granted.

As noted above, Defendant served its First Set of Interrogatories and First Request for Production of Documents, Writings or Things to Plaintiff on December 2, 2005. Under Fed. R. Civ. P. 33 and 34, Plaintiff had "30 days after service" of these requests to respond. It is now March 2006 and Plaintiff has not provided responses to discovery propounded by Defendant.

Therefore, this Court should compel Plaintiff's answers to interrogatories and responses to requests for production from Defendant. Moreover, pursuant to Fed. R. Civ. P. 37(a)(4), the Court should require Plaintiff or Plaintiff's counsel "to pay [Defendant] the reasonable expenses incurred in making the motion, including attorney's fees."

III. CONCLUSION

For the foregoing reasons, this Court should grant Defendant's Motion to Compel Plaintiff's Answers to Interrogatories and Production of Documents and award Defendant its attorneys' fees and costs in connection with this Motion.

This the 21st day of March, 2006.

Respectfully submitted,

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By: /s/ James R. Mulroy, II
James R. Mulroy, II
Kelly S. Gooch

CERTIFICATE OF SERVICE

I hereby certify that I have this 21st day of March, 2006 electronically filed the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL PLAINTIFF'S ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Kenneth F. Gray, Jr., Esq.
Bret M. Gray, Esq.
Griffin & Associates
2100 River Haven Drive, Suite 1
Hoover, AL 35244

/s/ James R. Mulroy, II